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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/769,779 | 02/03/2004 | Neil S. Holland | 002250-195 | 1023 |

21839 7590 04/21/2005

BURNS DOANE SWECKER & MATHIS L L P
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EXAMINER

KRAWCZEWICZ MYERS, LOUANNE C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1661

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/769,779

Applicant(s)

HOLLAND, NEIL S.

Examiner

Louanne C. Krawczewicz Myers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/3/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

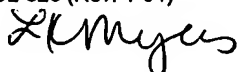
Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____



DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claim 1 remains rejected under 35 U.S.C. 112, first and second paragraphs, for the reasons stated below.

Applicant's amendment dated 01/31/05 failed to set forth at least the following:

- A. Page 1, line 2, "*Spyringa microphylla*" appears misspelled. Correction to the specification and/or clarification is necessary.
- B. Page 3, line 3, Applicant should delete "(No. 15,152)" and insert instead --No. 15,152)--.
- C. Page 3, line 4, U.S. Plant Patent Application No. 10/365,435 of the specification has matured into a United States Plant Patent. Applicant should delete "Application No. 10/365435 and insert instead --No. 15,588--, if accurate.

- D. Page 6, lines 7-17, it is noted that Applicant has set forth in the specification information relative to foliage characteristics such as venation and leaf surface. However, as stated in the previous Office Action dated 11/3/04, Applicant should import into the specification additional information relative to characteristic and observed foliage size (length and width) in the interest of providing as complete a botanical description of the plant as is reasonably possible and as exemplified in Plant Patent No. 12, 294.
- E. At page 7, lines 11 and 12, as stated in the previous Office Action dated 11/3/04, the color designations set forth for the comparative cultivars should be reviewed for accuracy. In this regard, it is noted that the leaf color designation set forth in United States Plant Patent Number 12,294 is 137D, not 138C (under surface). Correction to the specification and/or clarification is necessary.
- F. Page 7, lines 13-16, as stated in the previous Office Action dated 11/3/04, Applicant should set forth in the specification additional information relative to the instant plant's petioles including length and diameter.
- G. Page 8, lines 1 and 2, as stated in the previous Office Action dated 11/3/04, Applicant should set forth in the specification additional information with respect to characteristic an observed lenticel length and width.

- H. Page 9, lines 1-5, it is noted that Applicant has set forth in the specification information relative to the instant plant's bud shape. However as stated in the previous Office Action dated 11/3/04, Applicant should set forth in the specification additional information relative to the instant plant's flower buds including number of buds per truss.
- I. Page 8, lines 4-16, it is noted that Applicant has set forth in the specification information relative to the age when the instant plant has been observed to produce flowers. However as stated in the previous Office Action dated 11/3/04, Applicant should set forth in the specification additional information relative to the instant plant's inflorescence with respect to the typical and observed or number of blossoms/panicle or flowers/truss.
- J. Page 10, line 10, as stated in the previous Office Action dated 11/3/04, the recitation "Two per floret" is not understood. Did Applicant intend to state -- flower-- instead of "floret"?
- K. Page 10, lines 15 and 16, it is noted that Applicant has set forth in the specification that the instant plant produces pollen. However as stated in the previous Office Action dated 11/3/04, Applicant should set forth additional information in the specification as to the typical and observed amount of pollen

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produced, such as scarce, moderate or abundant, and its generic coloration.

Applicant should also set forth in the specification the pistil number.

Conclusion

The claim is not allowed.

If Applicant should submit an After- Final which will amend the rejections and objections noted above, then the application may be considered by the Examiner to be in condition for allowance.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louanne C. Krawczewicz Myers whose telephone number is (571) 272-0979. The examiner can normally be reached on Monday and Thursday from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0811. The fax phone numbers for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

LKM

LKM

KENT BELL
PRIMARY EXAMINER

Kent L. Bell